

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA.No.707/Hyd/2019		
Assessment Year: 2013-14		
The Dy. Commissioner of Income Tax, Circle – 17(1), Hyderabad.	Vs.	M/s. E.Centric Solutions Private Limited, 6-3-663/G/4, 1 st Floor, Innovative House, Punjagutta, Hyderabad. PAN : AABCG8600Q.
(Appellant)		(Respondent)
Assessee by:		Sri A. V. Raghuram
Revenue by:		Sri K.P.R.R. Murthy
Date of hearing:		15.02.2023
Date of pronouncement:		17.02.2023

ORDER

Per Shri Laliet Kumar, J.M.

The captioned appeal is filed by the Revenue, feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)-1, Hyderabad dated 08.02.2019 for the A.Y 2013-14 on the following grounds :

“i) Whether the CIT(A) was justified in admitting the additional evidence without disposing off the objections raised by the TPO on the admission of the same.

ii) Whether the, CIT(A) is justified in concluding that the services rendered to AEs and non-AEs are different, in spite of the failure of the assessee to discharge its burden of proof by substantiating its claim with corroborative evidences.

iii) Whether the CIT(A) is justified in ignoring the Business Functional Profile as reported by the assessee in Page No.68 of its TP Study report from which it is evident that the services rendered to AE also involve software technical skills.

iv) Whether the CIT(A) is justified in comparing the IT Enabled Services rendered to AEs with the Software Development Services rendered to Non-AEs to arrive at the concluding that the services rendered by the assessee to the AEs and Non-AEs are different and non-comparables.

2. The brief facts of the case are that assessee company is engaged in the business of export and sale of software. The assessee company filed its return of income for the AY 2013-14 on 30.11.2013 declaring an income of Rs.4,82,17,100/- under the normal provisions and the book profit of Rs.4,55,57,542/-. The return of income was processed u/s 143(1) of the I.T. Act, 1961. The case was selected for scrutiny under CASS and a notice u/s 143(2) dt.24.09.2014 was issued and duly served on the assessee. Thereafter, the case was referred to the Transfer Pricing Officer for determination of arm's length price in respect of international transactions during the relevant FY 2012-13. The TPO passed order on 27.10.2016 by determining arm's length price at Rs.1,80,92,738/-. A notice u/s 142(1) dt.26.05.2015 along with a questionnaire was issued to the assessee calling for information. In response to the notices issued u/s 143(2) and u/s 142(1), the authorized representative of the assessee company Sri Datla Prasad Raju, CA, appeared and furnished the information called for. After verification of the information, the scrutiny assessment was completed u/s 143(3) r.w.s. 92CA(3) of the Act on 02.02.2017 by making TP adjustment of Rs.1,80,92,738/- and assessed the total income at Rs.6,63,09,838/-.

3. Feeling aggrieved by the order passed by the assessing officer / TPO, assessee filed appeal before the Ld. CIT(A), who granted part relief to the assessee.

4. Feeling aggrieved by the order passed by the Ld. CIT(A), the Revenue is in appeal before us on the grounds mentioned herein above.

5. At the outset, it was submitted by the Id. DR that the order of the Id.CIT(A) is cryptic, non-speaking order and therefore, the same is required to be set aside. He had drawn our attention to Paras 5.4 and 5.5 of the order of the Id.CIT(A) which is to the following effect :

“5.4 The remand report was forwarded to the appellant for its comments / objections if any on 26.04.2018. In response, the appellant submitted its objections as follows :

“The services rendered by the appellant with AE clearly mentioned in the purchase orders which was submitted before the Assessing Officer. The services rendered include help desk services such as to provide information to the consultants related to health and vehicle insurance and their clients, procedure for applying credit cards, details of tourist bookings, travel and hotel bookings etc., all these services are grouped under help desk services, which can never be called as technical services, at the same travel arrangement services, data entry services bill verification services and web services can also never be called as the technical services. All these services are purely non-technical. The AO alleged that agreement between appellant and M/ s Medi Data Solutions Inc., is not clear, however, it can be noticed from the list of services in agreement that all the services are relating to development. All the services rendered to Non-AE are highly technical which involved development of testing tools, functions development, MIS Software etc., Hence, the returns are high when compared to non-technical services provided to AE. Most of services provided to non AE are charged on hourly basis, whereas services provided to AE are fixed per month. Variation in compensation for services provided to AE and Non-AE are not comparable. All the services rendered to AE are mostly confined to back office services such as help desk, data entry, web search, travel arrangement, bill verification and marketing services etc. None of these AE services are required technical skills that were required while providing services to Non-AE.

Hence, variation in services provided to AE being non-technical and Non-AE being technical, these two services are not comparable, vis-a-vis, the profits arising from these services are also not comparable."

5.5 *I have carefully considered the facts of the case, assessment order, remand report submitted by the Assessing Officer and the submissions of the appellant. On verification from the submissions of the appellant, it is noticed that there is a difference between services rendered to AEs and Non-AEs. As per the purchase orders, the description of the work was clearly mentioned and the same was provided to the Assessing Officer for verification and to submit the Remand report. The Assessing Officer in his remand report replied that it is not possible to conclude the appellant's transactions with AEs are very different from those with Non-AEs. But, as per the agreements, it is apparent that the AE rendered services are such as help desk services, travel arrangements, data entry services, bill verification, etc., Whereas Non-AEs services rendered are custom software development, custom script software development, quality testing, etc. Therefore, both are different in nature, so they cannot be compared and it is not correct to adopt AE services as same as Non-AEs. Since there is a difference in services rendered by the AE and Non-AE, the submissions of the appellant are accepted and hence, the addition made by the Assessing officer is deleted."*

6. Ld. DR had also drawn our attention to the order of the Assessing Officer more particularly Para 7 to 7.2 of his order. It was the contention of the ld. DR that the ld.CIT(A) without dealing with the objection of the Assessing Officer in a cryptic, non-speaking order has granted relief to the assessee. Further, it was submitted that the order passed by the ld.CIT(A) is contrary to the provisions of Rule 46A of the Income Tax Rules, 1963. The relevant paras i.e., Paras 7 to 7.2 of Assessing Officer's order read as under :

“7. *Economic Analysis :*

On perusal of the segmental analysis it is noticed that for SDS segment that taxpayer's margin in AE is 23.39% as against 44.30 in Non-AE and for ITES segment the taxpayer's margin in AE is 24.47% as against 50.99% in Non-AE even though the services rendered to AE and Non-AE are same. Hence, a show cause notice was issued to the taxpayer proposing adjustments of Rs.40,31,319/- by applying margin of 44.30% on the operating cost of SDS segment and Rs.1,39,92,738/- by applying margin of 50.99% on the operating cost of ITES.

7.1 *The taxpayer vide reply dated 26.10.2016 has submitted that the software services rendered to AE segment and Non-AE segment are entirely different because of which there is wide variation in operating cost in AE and Non-AE segment. Hence, there is a variation in the margins also.*

7.2 *The information filed by the taxpayer has been perused and it is noticed that the taxpayer has merely stated that the services rendered to AE and Non-AE are entirely different, but has not substantiated the same with corroborative evidence in proof of the same. Further, the taxpayer did not even furnish the copy of service agreements entered into by it with its AEs even though it was specifically asked to submit the same vide question no.29(d) of this office notice dated 28.03.2016 u/s 92CA of the Act. In the absence of fundamental documents viz., service agreements and invoices w.r.t. transactions made with AEs and Non-AEs, the assessee's submissions that its transactions with AEs and Non-AEs are not comparable, is without any basis and cannot be accepted."*

7. Per contra, the ld. AR of the assessee had vehemently relied upon the order passed by the ld.CIT(A). He further submitted that the order passed by the ld.CIT(A) is in accordance with the law.

8. We have heard the rival submissions and perused the material on record. In the present case, the assessee before the ld.CIT(A) had filed an additional evidence and based on such additional evidence, the ld.CIT(A) has called for the remand report. In the remand report, the Assessing Officer has referred the distinction between the services provided by the assessee and the other comparable companies and the Assessing Officer had also sought to made distinction between the assessee and internal comparable selected by the assessee for benchmarking the transactions. However, despite that the ld.CIT(A) has granted relief to the assessee which was clear from Para 5.5 of his order reproduced hereinabove. Since the order of the ld.CIT(A) was passed without granting of the opportunity of

hearing to the Assessing Officer and also without considering the objection of the Assessing Officer, more particularly, the service agreement of the assessee with its A.E and the services referred by assessee in different segments, it would be appropriate to remand back the matter to the file of the Assessing Officer/TPO with a direction to decide the appeal denovo after affording due opportunity of hearing to the assessee. On the date of hearing fix by the AO, the assessee shall file all the documents in support of his case. In case, the assessee failed to file any documents in support of his case, Assessing Officer shall decide the matter in accordance with the law. Accordingly, the appeal of Revenue is allowed for statistical purposes.

9. In the result, the appeal of Revenue is allowed for statistical purposes.

Order pronounced in the Open Court on 17th February, 2023.

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 17th February, 2023.

TYNM /sps

Copy to:

S.No	Addresses
1	M/s. E.Centric Solutions Private Limited, 6-3-663/G/4, 1 st Floor, Innovative House, Punjagutta, Hyderabad.
2	DCIT, Circle-17(1), Hyderabad
3	Pr.CIT (Central) (I/C), Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order